

IV. ONLINE HATE SPEECH, CYBERBULLYING AND THE ECTHR: TOWARD A COMMON EUROPEAN STANDARD?

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1. Introduction

Keeping pace with the rapid advances of science and technology has become a constant challenge for modern legislation, and human rights law is no exception. That is also true for online hate speech and cyberbullying: a significant part of hate crime and bullying-type behaviour has moved to the internet, and the legislator needs to adapt or develop solutions to this relatively new context while taking into consideration the specifics of the online space as well as the traditional solutions applied to offline cases.

The development of science and technology poses a particularly difficult test for international law, mainly because of the absence of decentralised legislation, the significant differences in the will of States, the delays in the conclusion and ratification of treaties, the (excessively) general or vague content of the provisions adopted and the inherent uncertainties of customary law. At the same time, international human rights courts, which are in some respect at the forefront of international adjudication, cannot remain silent about the inertia of legislation in providing real protection to applicants seeking redress, and are therefore trying to catch up with the development of science and technology by using ‘creative tools’ of judicial interpretation. In this respect, the European Court of Human Rights (hereinafter: ECtHR or Court) is an indispensable point of reference, as the Court, by applying the

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doctrines of evolutionary interpretation¹ and inherent obligations², allows the European Convention on Human Rights³ (hereinafter: ECHR or Convention), adopted more than 70 years ago, to function as a living instrument to this day, offering effective protection to the 830 million people covered by the Convention.⁴

The ECtHR has a very rich case-law on online hate speech and cyberbullying, especially on the former, and this chapter aims to outline the human rights contours of these crimes and unlawful conducts through the Strasbourg case-law. This chapter thus examines the issue from the perspective of victims, while primarily applying a case-analysis methodology. The selection of cases has been primarily focused on those directly related to the online context, although some general but closely related findings need to be explored in order to present examples of offline hate speech and bullying type behaviour. As hate speech and bullying typically involve different human rights violations, they will be analysed in separate sections.

2. Online hate speech in the case-law of the ECtHR

2.1. General overview: hate speech in international law

Hate speech does not have a universal, stand-alone definition in international law, but the international community has adopted a number of human rights instruments over the past eight decades that are relevant to this issue. The Universal Declaration of Human Rights⁵ (hereinafter: UDHR) was the first inter-

¹ Bernhardt, 2009, pp. 11–25; Dzehtsiarou, 2011, pp. 1730–1745.

² For more detail see McBride, J. (2021) *The Doctrines and Methodology of Interpretation by the European Court of Human Rights on the European Court of Human Rights* [Online]. Available at: <https://rm.coe.int/echr-eng-the-doctrines-and-methodology-of-interpretation-of-the-europe/1680a20aee>

³ European Convention on Human Rights, opened for signature 4 November 1950, E.T.S. No. 005, entered into force 3 September 1953. More rights are granted by additional protocols to the Convention [Protocols 1 (E.T.S. No. 009), 4 (E.T.S. No. 046), 6 (E.T.S. No. 114), 7 (E.T.S. No. 117), 12 (E.T.S. No. 177), 13 (E.T.S. No. 187), 14 (C.E.T.S. No. 194), 15 (C.E.T.S. No. 213) and 16 (C.E.T.S. No. 214)].

⁴ Council of Europe, European Court of Human Rights, Annual Report of 2020 [Online]. Available at: https://www.echr.coe.int/Documents/Annual_report_2020_ENG.pdf

⁵ United Nations General Assembly Resolution 217 A (III) (A/RES/3/217) adopted on 10 December 1948.

national instrument of the 20th century to declare the freedom of expression.⁶ Among the treaties that have come into being under the auspices of the United Nations, one can cite the International Convention on the Elimination of All Forms of Racial Discrimination adopted in New York on 21 December 1965⁷ (hereinafter: ICERD). Art. 4⁸ of the ICERD imposes an obligation on its States Parties to criminalise conducts that promote racial or ethnic superiority or incite hatred. On the other hand, Art. 19 of the International Covenant on Civil and Political Rights⁹ (hereinafter: ICCPR) provides for the criminalisation of conducts that promote racial or ethnic superiority or incite hatred. Art. 19¹⁰ guarantees the freedom of expression, and Art. 20¹¹ prohibits war propaganda and incitement to hatred on national, racial or religious grounds. Among the universal soft law documents, the Human Rights Committee's General Comment

6 Art. 19 of the UDHR: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

7 International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, United Nations, Treaty Series, vol. 660, p. 195.

8 Art. 4 of the ICERD: *States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

9 International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407.

10 Art. 19 of the ICCPR: *1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

11 Art. 20 of the ICCPR: *1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

No. 34 on Art. 19 of the ICCPR¹² is a comprehensive interpretation of the freedom of expression, synthesising jurisprudence.

The definition of hate speech at the European level is much more concentrated, although most of its elements remain at the level of soft law. A recommendation of the Committee of Ministers of the Council of Europe¹³ marks,

“For the purposes of the application of these principles, the term ‘hate speech’ shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”.

In addition, the European Commission against Racism and Intolerance of the Council of Europe's Recommendation¹⁴ uses the following definition,

“[Hate speech] means the use of one or more specific forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well as harassment, insult, negative stereotyping, stigmatisation or threats against such a person or group of persons, as well as any form of expression – that is based on based on a non-exhaustive list of personal characteristics or status that includes ‘race’, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, biological sex, social sex, gender identity and sexual orientation.”

In addition, it should be noted that the 2003 Supplementary Protocol to the 2001 Budapest Convention on Cybercrime against Xenophobia and Racism¹⁵ partially covers the elements of hate speech but does not address cases where hate is motivated by gender, sexual orientation or disability.¹⁶

¹² United Nations, International Covenant on Civil and Political Rights, Human Rights Committee 102nd session, Geneva, 11-29 July 2011, General Comment No. 34, Article 19: Freedoms of Opinion and Expression [Online]. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

13 Committee of Ministers of the Council of Europe Recommendation No R 97(20) 30.10.1997 [Online]. Available at: <https://rm.coe.int/1680505d5b>

¹⁴ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 15 on “Hate Speech” 8.12.2016 [Online]. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

15 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation
of acts of a racist and xenophobic nature committed through computer systems (ETS No.
189), 28 January 2003.

16 For more details on combating hate speech in the Council of Europe, see Council of Europe, Online Hate Speech [Online]. Available at: [https://www.coe.int/en/web/cyberviolence/online-hate-speech#%22103915149%22:\[0\],%22103915178%22:\[1\]](https://www.coe.int/en/web/cyberviolence/online-hate-speech#%22103915149%22:[0],%22103915178%22:[1])

The lack of a universal hard-law definition of hate speech leads to the practical consequence that the conduct and facts under which this act is committed vary widely from one state to another. However, a modest guideline can be confidently applied on the basis of American and European concepts of freedom of expression: if a communication creates a clear and present danger of violence,¹⁷ it will be considered hate speech.

2.2. Hate speech in Strasbourg case-law: a general framework

At the regional level, the most effective legal protection against hate speech is undoubtedly provided by the Strasbourg Court, which can rely on Article 10 of the ECHR on freedom of expression¹⁸ and Article 17 of the same convention on the prohibition of abuse of rights.¹⁹ As early as 1976, in *Handyside v. United Kingdom*,²⁰ in which the applicant was the owner of a British publishing house which had bought the exclusive rights to distribute in the UK a publication for teenagers containing sexually explicit contents which many considered obscene, but the distribution of the book was banned on grounds of public morality and many copies were confiscated, the Court found that in principle freedom of expression is an indispensable element of democratic societies and a fundamental condition for progress and the development of all human beings.²¹ Thus, Article 10(2) of the ECHR applies not only to ‘information’ and ‘ideas’ which are neutral or favourable in their reception or perception, but also to those which attack,

17 See Koltay, 2013, pp. 91–123. For the interpretation issues arising in Hungarian jurisprudence and the constitutional standards underlying the criminalisation of incitement against the community.

18 Article 10 (1) of the ECHR (Freedom of expression): *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

19 Article 17 of the ECHR (Prohibition of abuse of rights): *Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.*

20 *Handyside v. United Kingdom*, no. 5493/72, § 49, 7 December 1976.

21 On the two conflicting tests applied by the ECtHR in hate speech cases see Sottiaux, 2022, pp. 1193–1211.

shock or disturb the State or a part of the population.²² This stems from the requirements of pluralism, tolerance and openness, without which there will be no ‘democratic society’. It follows from the latter that any formality, condition, restriction or penalty applied in this area must be proportionate to the legitimate aim pursued. It is clear also from the judgment that freedom of expression is not limited to ‘pleasant’ communications but covers a much wider spectrum. Moreover, freedom of expression issues are most likely to come to the attention of the legislator when offensive, shocking or disturbing ideas, information, principles and views surface.²³

Freedom of expression therefore extends to criticism, satire, and even shocking, disturbing or offensive communications to certain sections of society, as these are the very embodiment of pluralism, tolerance and openness in a democratic society.²⁴ On the other hand, as will be seen below, offensive and seriously offensive internet communications which go beyond the limits of the satirical genre and even amount to defamation are no longer covered by Article 10 of the Convention.²⁵ As the ECtHR held in *Erbakan v. Turkey*,²⁶ where the applicant, a former Prime Minister and President of the Turkish Welfare Party, was sentenced to one year’s imprisonment and a fine for inciting the public to racial and religious hatred in a speech during the 1994 election campaign, tolerance and respect for the equal dignity of all human beings are the cornerstones of a democratic, pluralist society. Consequently, in certain democratic societies it may be necessary to sanction or even prevent any expression of opinion which spreads, incites, promotes or supports hatred based on intolerance provided that any formality, condition, restriction or penalty applied in this respect is proportionate to the legitimate aim pursued.

The ECtHR gives the Contracting Parties a margin of appreciation derived from the principle of subsidiarity,²⁷ however,²⁸ this margin is not unlimited, nor is it equal, given the diversity of opinions. Thus, e.g., in the case of online comments on politics, the freedom of expression of individuals is highly protected and the discretion of the State is reduced,²⁹ whereas, for example, in the

22 Mchangama – Alkiviadou, 2021, pp. 1008–1042.

23 Simon, 2018, p. 726.

24 *Perrin v. United Kingdom* (dec.), no. 5446/03, 18 October 2005.

25 *Bartnik v. Poland* (dec.), no. 53628/10, 11 March 2014.

26 *Erbakan v. Turkey*, no. 59405/00, § 56, 6 July 2006.

27 Vila, 2017, pp. 393–413.

28 The Strasbourg Court first elaborated the principle of freedom of discretion in detail in *Handyside v. United Kingdom*, cited above. See for more details.

29 See *Axel Springer AG v. Germany*, no. 39954/08, § 90, 7 February 2012; *Morice v. France*, no. 29369/10, § 125, 23 April 2015.

case of comments on commercial content, the public authorities may apply a wider range of restrictions.

The case of *Erbakan v. Turkey* illustrates a clear conclusion that can be drawn from the text of the Convention, namely that freedom of expression, although a human right of paramount importance, is not an absolute right: there are values that take precedence over it in certain cases and in certain social contexts. Article 10(2) of the ECHR enumerates possible grounds for restrictions that are acceptable in a democratic society, namely national security, territorial integrity, public safety, prevention of disorder or crime, protection of public health or morals, protection of the reputation or rights of others, prevention of the disclosure of confidential information, or the maintenance of the authority and impartiality of the judiciary. However, even these restrictions can only be applied if they are duly justified and restrictive.³⁰

States' obligations to protect institutions in relation to racism, hate speech, discrimination, intolerance, terrorism and the glorification of violence are particularly prominent in ECtHR case-law. For example, in *Jersild v. Denmark*,³¹ where the applicant was prosecuted for having interviewed three young people from the 'Greenjackets' group on a TV programme making racist remarks and inciting hatred, irrespective of the fact that the programme was a problem report on anti-immigration movements in a broader context, the European Commission of Human Rights (hereinafter: ECommHR) has stated in principle that it considers the fight against all forms and manifestations of racial discrimination to be of fundamental importance. In *Gündüz v. Turkey*,³² where the applicant, the leader of an Islamist sect, made a strong criticism of democracy in a television programme, the Court reiterated that tolerance and respect for the equal dignity of all human beings are the cornerstones of democratic and pluralist societies, and that sanctions for behaviour which promotes, incites, spreads or justifies hatred based on intolerance may therefore be considered necessary in a democratic society, provided that such sanctions are proportionate to the aim pursued. In the same case, the ECtHR also made it clear that freedom of expression does not apply to hate speech, and that this applies to any communication which is incompatible with the fundamental values protected by the Convention, in accordance with Article 17 of the ECHR on the prohibition of abuse of rights. This includes, according to ECtHR case-law, the denial of the Holocaust, the support for Nazi ideology, association of all

³⁰ Simon, 2018, p. 730.

³¹ *Jersild v. Denmark*, no. 15890/89, § 30, 23 September 1994.

³² *Gündüz v. Turkey*, no. 35071/97, §§ 40-41, 4 December 2003.

Muslims with serious terrorist acts, or specifically, that Jews are the source of all evil in Russia.³³

In cases where the Strasbourg Court is dealing with hate speech, the Convention offers two possible alternatives. The first is the application of Article 17³⁴ (prohibition of abuse of rights), which excludes from the protection afforded by the ECHR opinions that constitute hate speech and deny the fundamental values of the ECHR. For instance, in *Seurot v. France*,³⁵ where the applicant was a high school geography and history teacher who had published a violent, racist and hateful article in the school newspaper and was dismissed for it, the Court clarified the relationship between Article 10 and Article 17 establishing that Article 17 ECHR unquestionably excludes from the protection afforded by Article 10 any comment which constitutes an attack directly against the values enshrined in the Convention.

The function of Article 17 is twofold: on the one hand, it acts as an interpretative rule and, on the other, it is used as one of the exceptions to admissibility. The latter means that, if the ECtHR considers the application to be abusive, it falls outside the scope of the protection afforded by the other articles of the Convention and the merits of the application are no longer examined.³⁶ This categorical exclusion is aptly referred to in the scholarly discussions as the ‘guilt-lotline effect’,³⁷ which is applied primarily, but not exclusively, to clearly established historical facts.³⁸ The prohibition of abuse of rights was first invoked by the ECtHR in 1979 in *Glimmerveen and Hagenbeek v. the Netherlands*,³⁹ when it excluded the dissemination of ideas based on racial discrimination from the protection afforded by freedom of expression by invoking Article 17. A similar conclusion was reached by the ECtHR in *Kühnen v. Germany*⁴⁰ in relation to the reinstatement of the banned National Socialist German Workers’ Party, finding

33 See *Lehideux and Isorni v. France*, no. 55/1997/839/1045, §§ 46-58, 23 September 1998; *Garaudy v. France* (dec.), no. 65831/01, 7 July 2003; *Norwood v. United Kingdom* (dec.), no. 23131/03, 16 November 2004; *Witzsch v. Germany* (dec.), no. 7485/03, 13 December 2005; *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007.

34 The other approach is to invoke the limitations allowed by Article 10(2) (freedom of expression), which the ECtHR adopts in cases where the opinion in question, although it may constitute hate speech, is less likely to destroy the fundamental values of the Convention. Its application will be discussed later in this chapter.

35 *Seurot v. France* (dec.), no. 57383/00, 18 May 2004.

36 Bodnár, 2021, pp. 378–379.

37 Derenčinović, 2021, p. 8; Nikouei-Zamani, 2019, p. 68; Lobba, 2015, pp. 241-242; Canie-Voorhoof, 2011, p. 58.

38 Keane, 2007, p. 651.

39 *Glimmerveen and Hagenbeek v. Netherlands*, nos. 8348/78 and 8406/78, § 11, 11 October 1979.

40 *Kühnen v. Germany* (dec.), no. 12194/86, 28 May 1986.

that Article 10 of the Convention could not be invoked contrary to Article 17. Holocaust denial also sits at the common intersection of Articles 10 and 17: the applicant in *Remer v. Germany*⁴¹ was convicted by German courts due to his publication distributed, which claimed that gas chambers never existed in the Nazi concentration camps. Interestingly, in the latter two cases, the ECtHR invoked both Article 10(2) and Article 17 in its judgments, but unlike in *Glimmerveen and Hagenbeek v. the Netherlands*, it based its decisions on freedom of expression and followed the prohibition of abuse of rights only as a guideline.

Despite hate speech being one of the classic and clear exceptions to freedom of expression, there is no uniform definition of it in Strasbourg case-law. This is clear from the case of *Féret v. Belgium*,⁴² where the applicant was the President of the Belgian National Front and also the editor-in-chief of the party's publications inciting racist and xenophobic hatred, discrimination and violence, in which the majority of the Presiding Chamber held that any statement promoting, disseminating or justifying hatred based on intolerance constituted hate speech. In contrast, the judges who wrote the dissenting opinion interpreted the concept of hate speech more narrowly and did not consider the conduct to have been committed, as the applicant had not claimed the superiority of any racial group by his derogatory statements against immigrants.⁴³

2.3. The specifics of online hate speech in Strasbourg case-law

The scope of freedom of expression extends to both offline and online communications: the ECtHR Grand Chamber in *Delfi AS v. Estonia*⁴⁴ made it categorically clear that the ECHR applies to communications on the internet, although the specificity of the latter means that some rules cannot be derogated from. The Strasbourg Court pointed out, on the one hand, that internet content and communications, compared to the printed press, present a greater risk of violation of human rights and freedoms, in particular the right to privacy.⁴⁵ In *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, where the applicant was the editor-in-chief of the Odessa regional newspaper *Pravoye Delo*, and who, for reasons of cost-effectiveness, had on several occasions republished articles from other press organs and internet news portals without checking the authenticity of the sources, found that the electronic network, which serves billions of users

⁴¹ *Remer v. Germany* (dec.), no. 25096/94, 19 August 1994.

⁴² *Féret v. Belgium*, no. 15615/07, § 64, 10 December 2009.

⁴³ Uitz, 2021, p. 296.

⁴⁴ *Delfi AS v. Estonia*, no. 64569/09, § 131, 16 June 2015.

⁴⁵ *Delfi AS v. Estonia*, § 133.

worldwide, is not currently subject to the same rules and control mechanisms as the printed press and is unlikely ever to be so.⁴⁶

One should also devote some attention at this point to *Delfi AS v. Estonia*, a landmark case,⁴⁷ where the ECtHR examined the liability of an internet news portal provider for comments posted anonymously by users of the site, requires more detailed analysis. The applicant, the Delfi AS, was one of the leading online content providers in the Baltic region, and operated an internet news portal where readers could post comments on online news items after entering a nickname, and some of them posted comments on the site that were clearly a serious violation of privacy rights. The applicant referred the case to the ECtHR, claiming that the national courts had found him liable because users had posted offensive comments about a ferry company under an online news item. At the request of the shipping company's legal representative, Delfi AS removed the comments some six weeks after they had been published. The clearly unlawful comments undoubtedly infringed the rights of others, so the question in the case was not whether the removal of the comments violated the users' right to freedom of expression, but whether holding Delfi AS liable for the comments posted by third parties violated the news portal's right to information.

In the respecting case, the Court ruled that an internet content provider can be held liable for user comments on its website. However, two clarifications should be added here. The first is that the case concerned a news portal operated on a professional basis for commercial purposes, where users were allowed to comment, even anonymously, on articles written by the site's editors. The ECtHR pointed out that the findings of the judgment did not apply to other types of websites, such as advertising, chat rooms or social networking sites. The second is that the comments by readers on the news portal were a serious violation of the privacy rights of others and constituted hate speech.

In its judgment, the Grand Chamber took the view that the recognition of the differences between internet content providers and traditional publishers is in line with international standards in this area, which tend to distinguish between the legal norms governing the activities of traditional print media and audiovisual media, as well as online media.⁴⁸ In its Recommendation to

46 *Editorial Board of Pravoye Delo and Shtetel v. Ukraine*, no. 33014/05, § 63, 5 May 2011.

47 For more details, see Nádori P. (2013) *Delfi AS v. Estonia: Strasbourg ruling on service provider liability for anonymous comments* [Online]. Available at: <https://www.researchgate.net/publication/272823952>.

48 *Delfi AS v. Estonia*, § 113.

Council of Europe Member States on the new definition of media,⁴⁹ the Committee of Ministers calls this a ‘differentiated and graduated’ approach, requiring that all service providers enjoy an appropriate form (differentiated) and level (graduated) of protection and that their responsibilities are also determined in accordance with Article 10 ECHR and other relevant standards developed by the Council of Europe. Therefore, the Grand Chamber considered that, given the specific nature of the internet, the ‘obligation and responsibility’ imposed on online news portals under Article 10 may differ to some extent from that of traditional publishers as regards third-party content.

The Court also buttressed in its judgment in *Delfi AS v. Estonia* that a professional online content provider should be aware of the relevant legislation and case-law, as it has easy access to legal advice, and that it was in a position to weigh the risks inherent in its activities and foresee their consequences within a reasonable time, and that therefore the restriction under Article 10(2) of the Convention was ‘prescribed by law’.⁵⁰

In summary, in *Delfi AS v. Estonia*, the Grand Chamber laid down four criteria in relation to the liability of an internet content provider for comments posted by third parties: (i) the comments were offensive to human dignity, clearly unlawful and extreme in nature; (ii) the comments were posted under self-published articles of a commercially run internet content provider where the content provider explicitly encouraged its readers to post comments; (iii) the applicant had taken insufficient measures to remove the seriously offensive comments without delay (they were taken down only six weeks after their publication at the request of the victim); and (iv) the applicant was subject to a light sanction (320 EUR).

In this case, the ECtHR found no violation of Article 10 and agreed with the Estonian courts that the applicant was liable and that the restrictions on freedom of expression were not disproportionate. The ECtHR thus for the first time held a service provider liable for comments posted by third parties. Furthermore, the Court reiterated that comments which constitute hate speech are not protected by Article 10 of the Convention, i.e., they are not covered by the freedom of expression.

The Court pointed out on other occasions that the internet provides an unparalleled platform for freedom of expression, with the possibility for users

49 Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, HDS.IO/0008/13, 13 May 2013 [Online]. Available at: <https://edoc.coe.int/en/media/8019-recommendation-cmrec20117-on-a-new-notion-of-media.html>.

50 *Delfi AS v. Estonia*, § 129.

to share their communications easily, even anonymously.⁵¹ However, this advantage can be accompanied by certain dangers: defamatory and other types of clearly illegal speech, including incitement to violence and hate speech, can spread around the world in seconds, at speeds previously unimaginable, and remain permanently available on the internet with a few clicks. As the rights under Articles 8 and 10 of the Convention deserve equal respect, a balance must be struck between them that preserves the essence of both the right to privacy and freedom of expression. In line with this, while the use of the internet brings non-negligible benefits to the exercise of freedom of expression, liability for defamation, other unlawful communications and hate speech remains, and States Parties to the ECHR must ensure effective legal protection for violations of privacy rights in such cases as well.

Another lesson can be learnt from the case of *Hungarian Content Providers Association and Index.hu Zrt. v. Hungary*,⁵² which concerned the liability of the self-regulatory body of internet content providers and the internet news portal Index.hu for vulgar and offensive comments posted by users on their websites after they published an opinion criticising the deceptive business practices of two real estate websites. The defendants challenged the Hungarian court judgments against them, which effectively ordered them to moderate the content of comments posted by readers on their websites, arguing that this was contrary to freedom of expression. The ECtHR did indeed find a violation of the Convention in the case. Although they are not the publishers of the comments, online news portals have a duty and a responsibility for the content on their sites. The Court nevertheless held that the Hungarian courts, in deciding whether the applicants were liable, had not properly balanced the competing fundamental rights, namely the applicants' right to freedom of expression and the right of the real estate websites to respect their business reputation (the Hungarian courts had taken the illegality of the comments as a given, as they had damaged the business reputation of the real estate websites).

At this point, it is necessary to point out the essential difference between the *Delfi AS v. Estonia* case and the *Hungarian Content Providers Association and Index.hu Zrt. v. Hungary* case, given that at first glance, it can be seen that the ECtHR in the former case held the provider liable for offensive and vulgar comments posted by users, while in the latter it ruled the opposite. The reason for this

51 *Delfi AS v. Estonia*, § 110; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 48, 18 December 2012; *Times Newspapers Ltd v. United Kingdom* (nos. 1 and 2), nos. 3002/03 and 23676/03, § 27, 10 March 2009.

52 *Hungarian Content Providers Association and Index.hu Zrt. v. Hungary*, no. 22947/13, § 29-91, 2 February 2016.

difference is that the ‘Hungarian case’ did not contain the key element of the ‘Estonian case’, namely hate speech and incitement to violence: although the comments involved in the case of *Hungarian Content Providers Association and Index.hu Zrt. v. Hungary* were offensive and vulgar, the comments did not clearly constitute unlawful speech.

A similar conclusion can be drawn from the case of *Pihl v. Sweden*,⁵³ where the Court declared the application manifestly ill-founded and therefore inadmissible. The applicant was the victim of a defamatory comment published anonymously by a third party on an internet blog, who brought a civil action against the provider of the website, a small non-profit association, asking the court to declare the defendant liable for the offensive anonymous comments. After his action was dismissed by the Swedish courts, the applicant applied to the ECtHR for a declaration that his right to reputation and right to privacy had been violated. The ECtHR has highlighted the need to strike a delicate balance between the applicant’s right to privacy and the website provider’s freedom of expression in cases such as this, and the Swedish courts have done so in this case. The Court reiterated the importance it attached to the fact that, although the comment was offensive, it did not constitute hate speech or incitement to violence, it also based its finding of no breach on the fact that the blog provider was a small non-profit association, that the provider removed the offending post the day after the applicant’s comment, and that the comment had been on the website for only nine days.

In *Smajić v. Bosnia and Herzegovina*,⁵⁴ where the applicant was convicted by the national courts for incitement to national, ethnic and religious hatred, antagonism and intolerance after he had detailed in a series of internet posts what military measures would be necessary in the Serb-populated villages of the Brčko District in the event of another South Slav war. The ECtHR found no violation of Article 10 and declared the complainant’s application manifestly unfounded. The Court confirmed that the national criminal court had given adequate reasons for its decision, namely that the accused had used seriously offensive language against Serbs, touching on a very sensitive point of ethnic issues in post-conflict Bosnian society.

In *Nix v. Germany*,⁵⁵ the applicant was convicted for posting a picture of former Nazi leader Heinrich Himmler and a swastika on a blog. In the proceedings, the defendant complained that the German courts had failed to take into account, when handing down the judgment, that the purpose of his post

⁵³ *Pihl v. Sweden*, no. 74742/14, §§ 22-38, 17 February 2017.

⁵⁴ *Smajić v. Bosnia and Herzegovina*, no. 48657/16, §§ 29-42, 8 February 2018.

⁵⁵ *Nix v. Germany* (dec.), no. 35285/16, 5 April 2018.

was to protest against discrimination against immigrants in education and the workplace and that the decision therefore infringed his right to freedom of expression. Despite the ECtHR's recognition that the applicant's purpose in publishing the image was not indeed to disseminate totalitarian propaganda or incite hatred, and that the applicant may have intended to contribute to a public debate of public interest, the Court found that the applicant had resorted to a kind of 'communication taboo' to attract attention, which is not protected by Article 10 of the ECHR.

The petitioner in the case *Savva Terentyev v. Russia*⁵⁶ was convicted of inciting hatred after posting insulting comments about police officers under a blog post. The ECtHR found a violation of Article 10 of the Convention, confirming that although the comments posted by the applicant were indeed offensive and shocking, this alone did not constitute grounds for interfering with the State's freedom of expression.

In *Kilin v. Russia*,⁵⁷ the national authorities prosecuted the applicant for dissemination of extremist content and sentenced him to 18 months suspended imprisonment and a probation period of the same duration. According to the prosecution, the applicant had posted video and audio recordings with racist content of neo-Nazis, the use of racial epithets, persons of apparent Caucasian origin and calls for extremism on a popular online community site. In the present case, the Court held that the applicant's prosecution was contrary to Article 10 of the Convention. Likewise, the ECtHR ruled that the applicant had not infringed Article 10 of the ECHR: taking into account the racist nature of the material and the fact that the applicant did not, when publishing the content, attach any mitigating circumstances to the content, namely that it was satirical work of art, the national authorities had established conclusively that the material complained of incited ethnic hatred and that the applicant had a clear intention to incite acts of hatred or intolerance.

*Standard Verlagsgesellschaft mbH v. Austria*⁵⁸ focused on a court order against the applicant media company, which ordered the publication of a list of registered commentators on the website of the daily newspaper *Der Standard*, following the publication of a number of comments on the website which linked politicians, including neo-Nazis. Although the comments were removed by the applicant, it refused to disclose the identity of the users who had written them. In the case, the ECtHR found the injunction to be in breach of the Convention, arguing that the national authorities had generally failed to comply with their

⁵⁶ *Savva Terentyev v. Russia*, no. 10692/09, §§ 41-87, 28 August 2018.

⁵⁷ *Kilin v. Russia*, no. 10271/12, §§ 44-96, 15 May 2021.

⁵⁸ *Standard Verlagsgesellschaft mbH v. Austria* (no. 3), no. 39378/15, §§ 49-97, 7 December 2021.

duty to balance the fundamental rights at stake and had not provided adequate reasoning to justify the interference with the rights of the complainant media company. The Court found that the comments at issue in the case did not constitute hate speech or incitement to violence, they were merely part of a political debate of public interest, and that the restriction on freedom of expression was therefore not necessary in a democratic society.

In *Sanchez v. France*,⁵⁹ which was referred to the Grand Chamber on 17 January 2022, the applicant was convicted of incitement against a religious group. The applicant was a local candidate standing in the parliamentary elections who failed to promptly delete hateful comments posted by others on his Facebook site. The ECtHR Chamber of seven judges ruled by 6 to 1 that the applicant's criminal conviction did not infringe freedom of expression: the French criminal court's judgment was properly reasoned and within the margin of appreciation granted to Contracting Parties in accordance with the principle of subsidiarity, and the restriction was necessary in a democratic society. Thus, with regard to user comments on the internet that contain hate speech or direct incitement to violence, the obligations arising from Article 10(2) of the ECHR can be established for internet news portals that allow the publication of reader comments on their websites for commercial and professional purposes.⁶⁰

In addition, the ECtHR has also held that certain statements, without directly constituting an incitement to hatred, can be just as serious and harmful and are therefore incompatible with the Convention. A striking example of this is *Vejdeland v. Sweden*,⁶¹ where the Court held that discrimination based on sexual orientation is as serious as discrimination based on race, descent or colour. In this context, particular vigilance is needed in the online space, where a debate on a legitimate issue can easily escalate into a debate on a legitimate issue, and discriminatory remarks can be made that violate the Convention, and that may harm the human rights and dignity and reputation of minorities or vulnerable groups. Given that the line between legality and illegality is extremely thin, comments by internet users require particular vigilance on the part of law enforcement, even if the original intention of the commentators was not to express contempt for individuals or groups.

⁵⁹ *Sanchez v. France* (dec.), no. 45581/15, 2 September 2021.

⁶⁰ For a detailed analysis see Kupsch, F. (2021) 'Watch Your Facebook Comment Section! Holding Politicians Criminal Liable for Third Parties' Hate Speech – No Violation of Freedom of Expression under the ECHR' *Völkerrechtsblog* [Online]. Available at: <https://voelkerrechtsblog.org/watch-your-facebook-comment-section/>.

⁶¹ *Vejdeland and others v. Sweden*, no. 1813/07, §§ 55-57, 9 February 2012.

3. Cyberbullying in the case-law of the ECtHR

A study of the Council of Europe,⁶² published in December 2021, pointed out that the curfew, restrictions and closures imposed by the COVID-19 pandemic had increased the amount of time spent online, making already vulnerable groups, especially women and children, more vulnerable to cybercrime.⁶³ Although numerous Council of Europe conventions regulate certain forms of cyberbullying, which has become particularly acute in recent years, and provide some solutions to this problem, such as the 2001 Budapest Convention on Cybercrime,⁶⁴ the 2007 Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,⁶⁵ or the 2011 Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Istanbul Convention on combating and preventing violence against women and violence in relationships,⁶⁶ it can be established that the ECHR is the most effective regional human rights instrument in force on the old continent, as it is accompanied by judicial protection and the implementation of the Strasbourg Court's judgments is monitored by the Committee of Ministers of the Council of Europe.

Therefore, as with online hate speech, this section attempts to provide a comprehensive overview of the human rights aspects of cyberbullying by reviewing the relevant ECtHR case-law. Accepting the criminological position⁶⁷ that bullying or cyberbullying is an umbrella term, difficult to define and can take many forms, this diversity is demonstrated by the respecting cases selected from the case-law of the Court. In addition, the presentation of case-law seems appropriate because of the importance of judicial interpretation, not only at national but also at international level, given the technical novelty of historical facts.

62 Van der Wilk, E. (2021) *Protecting Woman and Girls from Violence in the Digital Age. The Relevance of the Istanbul Convention and the Budapest Convention on Cybercrime in Addressing Online and Technology-Facilitated Violence against Women* [Online]. Available at: <https://rm.coe.int/prems-153621-gbr-2574-study-online-a4-bat-web/1680a4cc44>

63 The study also provides a detailed analysis of which provisions of the Budapest Convention and the Istanbul Convention can provide protection in cases of cyberbullying of women and girls.

64 Act LXXIX of 2004 on the proclamation of the Council of Europe Convention on Cybercrime, signed in Budapest on 23 November 2001.

65 Act XCII of 2015 on the proclamation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and on the amendment of certain acts in this context.

66 Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), 11 May 2011.

67 Parti, 2016, pp. 115–117.

As it will be seen later, bullying-type acts are characterised by the fact that they are primarily brought before the Strasbourg Court because of the violation of the right to privacy. The general truth that the rise of the information society has made the protection of privacy one of the greatest challenges of the modern age is, of course, also true of the ECtHR.⁶⁸ The right to respect for private and family life, which includes respect for home and correspondence, is found in Article 8 of the ECHR,⁶⁹ and it is no exaggeration to say that it is certainly the least definable provision of the Convention.⁷⁰ The right to privacy, as a classic first-generation human right, requires both abstention and non-action on the part of the State, and also entails an obligation to protect institutions, i.e., the State must create in the national legal system the legal guarantees that provide adequate protection for the private sphere of the individual. The right to privacy, like freedom of expression, is not an absolute human right and ECHR Contracting States do not enjoy a permanent margin of appreciation in restricting it. Generally speaking, the more sensitive the right protected, or the more relevant it is to the identity and privacy of the individual, the narrower the margin of appreciation granted to the State.⁷¹

In the same vein, the ECtHR thus also imposes a positive obligation on States Parties to the Convention in the fight against online violence and cybercrime, and this obligation is even more pronounced in the case of vulnerable groups. The Court has declared various social groups vulnerable in a number of judgments, with the practical consequence of a stricter obligation on the part of the State to protect its institutions.

It is clear from the case-law of the ECtHR that the rights of children and young people, given their physical and mental vulnerability, must be protected in all circumstances, as they can access information on the internet with unprecedented ease and speed and can easily be targeted for sexual abuse or even paedophilia.

The latter is perfectly illustrated in *K.U. v. Finland*,⁷² where a 12-year-old boy was the victim of an anonymous stranger who placed an advertisement with

⁶⁸ Balogh, 2018, p. 470.

⁶⁹ Article 8 of the ECHR: (1) *Everyone has the right to respect for his private and family life, his home and his correspondence.* (2) *An authority may intervene in the exercise of this right only in cases provided for by law, where it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public health or morals, or for the protection of the rights and freedoms of others.*

⁷⁰ Harris et al., 2018, p. 522.

⁷¹ Sulyok, 2021, pp. 183–184.

⁷² *K.U. v. Finland*, no. 2872/02, § 43, 2 December 2008.

sexual content on his behalf on an online dating site. The child's father was unable to bring criminal proceedings against the perpetrator in Finland because, under the laws in force at the time, the investigating authorities could not require the service provider to identify the person who had shared the advertisement. The Court found that the State had failed to fulfil its positive obligation to ensure that the child's right to privacy was adequately protected and that the child's physical and mental health was not protected against the obligation of confidentiality. The ECHR protects physical and mental integrity under Article 8 and, in this light, anonymity on the internet and the obligation of confidentiality should not prevent the State from protecting the rights of potential victims, especially when it comes to a vulnerable group. The obligation of confidentiality cannot be absolute, and the legislator must provide an appropriate framework to reconcile the different competing needs for protection.

In *Muscio v. Italy*,⁷³ the president of an association of Catholic parents received pornographic e-mails from an unidentified sender, but his claim against the unknown person was rejected by the national courts after he tried to seek redress through the courts. Although the ECtHR has ruled that unsolicited content received electronically may constitute an interference with the right to privacy, by registering for an e-mail account, users of e-mail services acknowledge that their privacy cannot be absolutely protected on the internet and that they are exposed to the risk of unwanted messages, which the use of various filters can otherwise address. Given that the case in Italy was not unique and that many other States have also encountered objective difficulties in combating anonymous spam senders, modern technical means are not always sufficient to identify the sender, the Court did not confirm that the State was required to make additional efforts to comply with its obligation to protect institutions.

In *Buturugă v. Romania*,⁷⁴ the applicant was a victim of domestic violence: her husband not only abused her physically and threatened her with death, but after the parties divorced, he hacked into her electronic accounts, including her Facebook profile, and then downloaded her private conversations, documents and photos. The ex-wife made several attempts to seek help from the Romanian authorities, first for physical abuse and then for threats to withdraw the complaint. Later, she requested a search of her electronic devices and initiated criminal proceedings on suspicion of mail fraud. The prosecutor's office did not investigate the death threats for lack of criminality and closed the case for

⁷³ *Muscio v. Italy* (dec.), no. 31358/03, 13 November 2007.

⁷⁴ *Buturugă v. Romania*, no. 56867/15, §§ 43-79, 10 February 2020.

breach of confidentiality, citing the lateness of the complaint and the lack of a link to domestic violence. The offender was eventually fined 250 EUR for other offences. The applicant appealed against the decision of the prosecution to the court, which issued a restraining order against the accused, but the ex-husband did not comply with the terms of the order and the police did not monitor its execution. In its judgment, the ECtHR made it clear that cyberbullying is a form of violence against women and girls and can take many forms, such as accessing the victim's computer, downloading personal data, sharing and manipulating data and photographs. In cases of domestic violence, cyber-surveillance is often used by the perpetrator. The Court also ruled that a breach of confidentiality of correspondence should have been taken into account in the investigation of domestic violence.⁷⁵

The applicant in *Volodina v. Russia*⁷⁶ was physically abused and harassed online by her former partner. The perpetrator created fake profiles on various social networking sites with the applicant's name, personal details and nude photos of her, and then introduced her classmates and teachers as acquaintances. He also hid a GPS tracker in the lining of the complainant's bag and sent her death threats in the form of electronic messages. The Russian authorities were initially reluctant to investigate the case, claiming lack of jurisdiction, and the investigation was closed two and a half years later, having been closed due to the statute of limitations. (The GPS tracker and the death threats were never investigated in the absence of a criminal offence.) In this case, the Court categorically highlighted that Contracted Parties to the Convention must take effective action against all forms of domestic violence, whether offline or online. Furthermore, the ECtHR also stated that, since cyberbullying is primarily a violation of the victim's right to privacy, criminal and civil law at national level is necessary to ensure that privacy is adequately protected. In its judgment, the Strasbourg Court found that Russia had breached its obligations to protect the institutions under the Convention by failing to provide adequate criminal law to prevent prosecution for cyber intimidation.⁷⁷

In *Tamiz v. United Kingdom*,⁷⁸ the applicant had complained to the Court that his reputation had been damaged by comments on a blog, the ECtHR found, in the context of the internet that the test of gravity of the infringement was of

⁷⁵ For more details see Sulyok M. (2021) *A thousand faces of abuse? Legal approaches from harassment to cyberbullying* [Online]. Available at: <https://jogaszegylet.hu/jogelet/a-bantalmazas-ezer-arca-jogi-megkozelitesek-a-zaklatastol-a-cyberbullyingig/>

⁷⁶ *Volodina v. Russia* (no. 2), no. 40419/19, §§ 33-68, 14 September 2021.

⁷⁷ For more details see McQuigg, 2021, pp. 155-167.

⁷⁸ *Tamiz v. United Kingdom*, no. 3877/14, §§ 80-81, 19 September 2017.

the utmost importance, as millions of users post offensive or even defamatory comments every day. However, these comments are mostly trivial in nature and reach such a narrow audience that they cannot actually harm the reputation of the victim. In this case, although the comments complained of were indeed vulgar and abusive, they did not go beyond the vulgar and degrading nature which is part of the normal style of communication on many internet portals.

By contrast, the facts of *Egill Einarsson v. Iceland*⁷⁹ met the test of gravity of the infringement. The petitioner was a well-known Icelandic blogger, writer and television figure who was prosecuted on suspicion of sexual assault, but the investigation was dropped for lack of evidence. Subsequently, the applicant consistently denied the crimes in an interview with a local magazine, which included a photograph of him on its front page. On the same day, someone altered the cover page photo and uploaded a picture on Instagram in which he accused her of committing sexual offences in vulgar language, called her a rapist and wrote the word ‘loser’ around her face. The Court’s examination focused on the question of whether the vulgar communication constituted a value judgment or a statement of fact in the present case. The ECtHR held that such a remark was capable of constituting an interference with the applicant’s private life if it reached a certain degree of seriousness. Furthermore, the Court pointed out that Article 8 should be interpreted as meaning that even if their conduct and public comments have provoked heated debate, public figures should not be required to tolerate being publicly accused of violent crimes without such statements being supported by facts. Another aspect of the case *Egill Einarsson v. Iceland*⁸⁰ was examined by the Strasbourg Court in a separate procedure. The Icelandic courts declared the defamatory comments about the applicant on Facebook to be null and void but refused to award him additional damages in the circumstances of the case. In the light of the ECtHR’s findings in the present case, the failure to award damages does not in itself amount to a violation of Article 8. In considering whether the applicant’s reputation was sufficiently protected, the ECtHR took into account, inter alia, the fact that the statements were published as comments on a Facebook page among hundreds or thousands of other comments and that they were promptly removed by their author at the applicant’s request.

⁷⁹ *Egill Einarsson v. Iceland*, no. 24703/15, § 52, 7 November 2017.

⁸⁰ *Egill Einarsson v. Iceland* (no. 2), no. 31221/15, §§ 38-39, 17 July 2018.

Summary

Both online hate speech and cyberbullying have strong human rights roots, but while the former mostly violates Article 10 on freedom of expression and Article 17 on the prohibition of abuse of rights, the latter regularly conflicts with Article 8 of the ECHR, the right to respect for private life. The Court's case-law also demonstrates that while hate speech case-law dates back several decades and the number of relevant cases is quite high, cyberbullying has only come to the attention of the ECtHR in recent years and the number of cases remains relatively low. Both hate speech and cyberbullying have no uniform definition in international law or in the case-law of the Strasbourg Court. The fragmented nature of the definition of hate speech is illustrated by the case of *Féret v. Belgium*, where the majority opinion of the presiding chamber of judges described as hate speech any statement based on intolerance that advocated, propagated or justified hatred, whereas the judges who delivered the dissenting opinion considered the superiority of racial groups to be an intrinsic part of the concept. Moreover, the definition of cyberbullying is not even present in the Strasbourg case-law, and the Court itself has only used the term once in the case of *Buturugă v. Romania*, stating that cyberbullying is a form of violence against women and girls.

Hate speech, despite the fact that freedom of expression extends not only to 'pleasant' communications, but also to criticism, satire, or even shocking, disturbing, offensive expressions, does not fall within the scope of the protection guaranteed by Article 10 of the Convention: the restriction of hate speech based on intolerance is considered necessary in a democratic society. Moreover, in cases where the facts are contrary to the fundamental values of democratic societies, such as Holocaust denial or support for Nazi ideology, the Strasbourg Court rejects applications submitted to it at the admissibility stage on the grounds of the prohibition of abuse of rights.

As far as the ECtHR's jurisprudence on online hate speech is concerned, *Delfi AS v. Estonia* is a significant milestone, as it was the first case in which the Strasbourg Court examined the liability of an internet news portal provider for comments posted anonymously by users of the site. The Grand Chamber based its findings of liability on the extreme, extremist, hate speech quality of the comments, as well as on the commercially run internet content provider's encouragement of commenting and its inadequate measures (i.e., the late removal of illegal comments). The standard of liability for the removal of anonymous comments posted by third parties is clearly established when the *Delfi AS v. Estonia* case is compared with the *Hungarian Content Providers Association and Index. hu Zrt. v. Hungary* case. There seems to be a contrast between the two cases

in that the ECtHR in the former held the service provider liable for offensive and vulgar comments posted by users, while in the latter it ruled the opposite. The reason for this is to be found in the dividing line between hate speech and offensive speech that is not clearly unlawful: although the comments in *Hungarian Content Providers Association and Index.hu Zrt. v. Hungary* were offensive and vulgar, unlike in *Delfi AS v. Estonia*, where the comments did not constitute clearly unlawful speech.

As for the umbrella terminology of cyberbullying, it can be mainly associated with cases of sexual harassment, intimate partner violence and defamation of reputation from ECtHR case-law. Consequently, it can be established that the Contracting Parties to the Convention have a particularly strong institutional obligation to protect the most typical victims of cyberbullying, namely women and children, and that this positive obligation extends to the creation of the necessary criminal law offences. On the other hand, the Strasbourg Court has also held that there may be situations where even modern technical means are not sufficient to identify the senders of spam and the complainant must tolerate a violation of his right to privacy because of unsolicited e-mails. Similarly, in the context of cyberbullying, the Court has ruled that the infringement must reach a certain level of seriousness, and that this level of seriousness must exceed the level of the degrading and vulgar comments posted by millions of people every day.

All in all, human rights of individuals are protected online and offline in the same way, only the specificities of the internet can cause difference. This chapter has attempted to highlight these specificities by outlining the relevant case-law of the Strasbourg Court, with the expectation that the ECtHR will further enrich and refine the relevant details in the future.

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